

Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 571-272-9797  
Fax: 571-273-0042

Filed April 9, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

WILLIAM A. SEITZ, ROBERT E. GARFIELD,  
ALEXANDRU T. BALABAN, AND RANDALL J. STEWART,  
Junior Party  
(U.S. Patents 6,103,275 and 7,048,951),

v.

NIGEL BENJAMIN, HAMISH DOUGALL,  
AND ANTHONY ORMEROD  
Senior Party  
(U.S. Application 10/701,295).

---

Patent Interference No. 105,687 (MPT)  
(Technology Center 1600)

---

DECLARATION - Bd.R. 203(b)<sup>1</sup>

---

<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. ' 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1           Part A. Declaration of interference

2           An interference is declared (35 U.S.C. § 135(a)) between the above-  
3 identified parties. Details of the application(s), patent (if any), reissue application  
4 (if any), count(s) and claims designated as corresponding or as not corresponding  
5 to the count(s) appear in Parts E and F of this DECLARATION.

6           Part B. Judge managing the interference

7           Administrative Patent Judge Michael P. Tierney has been designated to  
8 manage the interference. Bd. R. 104(a).

9           Part C. Standing order

10          A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this  
11 DECLARATION. The STANDING ORDER applies to this interference.

12          Part D. Initial conference call

13          A telephone conference call to discuss the interference is set for 2:00 p.m. on  
14 May 26, 2009 (the Board will initiate the call).

15          No later than four business days prior to the conference call, each party shall  
16 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204;  
17 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

18          A sample schedule for taking action during the motion phase appears as  
19 Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the

1 schedule prior to the conference call and to agree on dates for taking action. A  
2 typical motion period lasts approximately eight (8) months. Counsel should be  
3 prepared to justify any request for a shorter or longer period.

4 Part E. Identification and order of the parties

5 Junior Party

6 Named inventors: WILLIAM A. SEITZ, DICKINSON TX  
7 ROBERT E. GARFIELD, FRIENDSWOOD, TX  
8 ALEXANDRU T. BALABAN, COLUMBIA, MD  
9 RANDALL J. STEWART, GALVESTON, TX

10 Involved Patent #1 : U.S. Patent No. 7,048,951, issued May 23, 2006, based  
11 upon U.S. Application 10/296,110, filed November 22,  
12 2002.

13 Involved Patent #2: U.S. Patent No. 6,103,275, issued August 15, 2000,  
14 based upon U.S. Application 09/095,174, filed June 10,  
15 1998.

16 Title: Systems and Methods for Topical Treatment with Nitric  
17 Oxide

18 Assignee: Nioxx, LLC, Dickinson TX  
19

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

Named Inventors: NIGEL BENJAMIN, LONDON, UK  
HAMISH DOUGALL, ABERFELDY, UK  
ANTHONY ORMEROD, ABERDEEN, UK

Involved Application: U.S. Application 10/701,295, filed November 3, 2003.

Title: Acidified Nitrite as an Antimicrobial Agent

Assignee: Aberdeen University, Aberdeen, UK

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

## Part F. Count and claims of the parties

## Count 1

A composition according to claim 23 of U.S. Patent 7,048,951 or claim 12 of U.S. Patent 6,103,275 or claim 28 of U.S. Application 10/701,295.

The claims of the parties are:

Seitz, U.S. Patent 6,103,275: 1-19  
Seitz, U.S. Patent 7,048,951: 1-35

1 Benjamin, U.S. Application 10/701,295: 28, 30 and 31

2  
3 The claims of the parties which correspond to Count 1 are:

4 Seitz, U.S. Patent 6,103,275: 1-19

5 Seitz, U.S. Patent 7,048,951: 1-35

6 Benjamin, U.S. Application 10/701,295: 28, 30 and 31

7  
8 The claims of the parties which do not correspond to Count 1, and therefore

9 are not involved in the interference, are:

10 Seitz, U.S. Patent 6,103,275: None

11 Seitz, U.S. Patent 7,048,951: None

12 Benjamin, U.S. Application 10/701,295: None

13  
14 The parties are accorded the following benefit for Count 1:

15 Seitz: None

16 Benjamin: (i) U.S. Application 09/330,654, filed June 11, 1999,

17 now U.S. Patent 6,709,681, issued March 23, 2004;

18 (ii) U.S. Application 08/696,930, filed August 21, 1996;

19 (iii) PCT/GB95/00338, filed February 17, 1995.

20  
21 Part G. Heading to be used on papers

22 The following heading must be used on all papers filed in this interference,  
23 see SO ¶ 106.1.1:

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2  
3  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 WILLIAM A. SEITZ, ROBERT E. GARFIELD,  
9 ALEXANDRU T. BALABAN, AND RANDALL J. STEWART,  
10 Junior Party  
11 (U.S. Patents 6,103,275 and 7,048,951),  
12

13 v.

14  
15 NIGEL BENJAMIN, HAMISH DOUGALL,  
16 AND ANTHONY ORMEROD  
17 Senior Party  
18 (U.S. Application 10/701,295).  
19

20  
21  
22 Patent Interference No. 105,687 (MPT)  
23 (Technology Center 1600)  
24

25  
26 Part H. Order form for requesting file copies

27 When requesting copies of files, use of SO Form 4 will greatly expedite  
28 processing of the request. Please attach a copy of Parts E and F of this  
29 DECLARATION with a hand-drawn circle around the patents and applications for  
30 which a copy of a file wrapper is requested.

31  
32 /Michael P. Tierney/  
33 Administrative Patent Judge

1 Enc:

2 Copy of STANDING ORDER

3 Copy U.S. Patents 6,103,275 and 7,048,951

4 Copy of claims of U.S. App. 10/701,295

5  
6 Revised 3 January 2006

7  
8  
9 cc (via overnight delivery):

10  
11 Attorney for Sietz:

12  
13 Daniel S. Hodgins

14 HEAD, JOHNSON & KASHIGAN

15 204 NORTH ROBINSON AVENUE

16 SUITE 3030

17 OKLAHOMA CITY, OK 73102

18 Tel: 405-236-4000

19  
20 JACKSON WALKER LLP

21 901 MAIN STREET

22 SUITE 6000

23 DALLAS, TX 75202-3797

24 Tel: 214-953-5978

25  
26  
27 Attorney for BENJAMIN:

28  
29 Donna M. Ferber

30 GREENLEE WINNER AND SULLIVAN PC

31 4875 PEARL EAST CIRCLE

32 SUITE 200

33 BOULDER, CO 80301

34 Tel: 303-499-8080